

AMENDMENT TO H.R. _____**OFFERED BY MR. UPTON OF MICHIGAN****Title I Manager's amendments**

In section 630(b)(2) of such Act (as so added),
strike subparagraph (E) and insert the following:

1 “(E) RETURN TO LOCAL FRANCHISING IF
2 CABLE COMPETITION CEASES.—

3 “(i) If only one cable operator is pro-
4 viding cable service in a franchise area,
5 and that cable operator obtained a national
6 franchise for such franchise area under
7 subsection (d)(2), the franchising authority
8 for such franchise area may file a petition
9 with the Commission requesting that the
10 Commission terminate such national fran-
11 chise for such franchise area.

12 “(ii) The Commission shall provide
13 public notice and opportunity to comment
14 on such petition. If it finds that the re-
15 quirements of clause (i) are satisfied, the
16 Commission shall issue an order granting
17 such petition. Such order shall take effect
18 one year from the date of such grant, if no



1 other cable operator offers cable service in
2 such area during that one year. If another
3 cable operator does offer cable service in
4 such franchise area during that one year,
5 the Commission shall rescind such order
6 and dismiss such petition.

7 “(iii) A cable operator whose national
8 franchise is terminated for such franchise
9 area under this subparagraph may obtain
10 a new franchise under this section or sec-
11 tion 621, in accordance with the provisions
12 of such sections.

In section 630(d) of such Act (as so added) strike
paragraph (2) and insert the following:

13 “(2) EXISTING PROVIDERS OF CABLE SERV-
14 ICE.—A person or group that is providing cable
15 service under section 621 in a franchise area on the
16 date of enactment of this section may provide cable
17 service pursuant to a national franchise under this
18 section in such franchise area if—

19 “(A) another cable operator commences
20 providing cable service pursuant to a national
21 franchise under this section in such franchise
22 area after such date of enactment; or



1 “(B) such person or group is one of two
2 cable operators providing cable service in such
3 franchise area on such date of enactment, one
4 of which is an incumbent local exchange carrier
5 (as such term is defined in section 251(h)) or
6 its affiliate, and—

7 “(i) the section 621 franchise of such
8 person or group ceases to be in effect; and

9 “(ii) the other cable operator is still
10 providing cable service in such franchise
11 area on the date that the national fran-
12 chise of such person or group becomes ef-
13 fective.

 In section 630(d)(1) of such Act (as so added) strike
 “(in this section referred to as a ‘new cable operator’)”.

 In the second sentence of section 630(e)(1) of such
Act (as so added), after “on the effective date of such na-
tional franchise” insert the following: “, or there is no
other cable operator in such franchise area on such date
that is required to provide channel capacity for public,
educational, and governmental use,”.

 In section 630 of such Act (as so added), strike sub-
section (h) and insert the following:

14 “(h) ANTIDISCRIMINATION.—



1 “(1) PROHIBITION.—A cable operator with a
2 national franchise under this section shall not deny
3 access to its cable service to any group of potential
4 residential cable service subscribers because of the
5 income of that group.

6 “(2) ENFORCEMENT.—

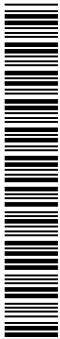
7 “(A) COMPLAINT.—If a franchising au-
8 thority in a franchise area has reasonable cause
9 to believe that a cable operator is in violation
10 of this subsection with respect to such franchise
11 area, the franchising authority may, after com-
12 plying with subparagraph (B), file a complaint
13 with the Commission alleging such violation.

14 “(B) NOTICE BY FRANCHISING AUTHOR-
15 ITY.—Before filing a complaint with the Com-
16 mission under subparagraph (A), a franchising
17 authority—

18 “(i) shall give notice of each alleged
19 violation to the cable operator;

20 “(ii) shall provide a period of not less
21 than 30 days for the cable operator to re-
22 spond to such allegations; and

23 “(iii) during such period, may require
24 the cable operator to submit a written re-



1 sponse stating the reasons why the oper-
2 ator has not violated this subsection.

3 “(C) BIENNIAL REPORT.—A cable oper-
4 ator with a national franchise under this section
5 for a franchise area, not later than 180 days
6 after the effective date of such national fran-
7 chise, and biennially thereafter, shall submit a
8 report to the Commission and the franchising
9 authority in the franchise area—

10 “(i) identifying the geographic areas
11 in the franchise area where the cable oper-
12 ator offers cable service; and

13 “(ii) describing the cable operator’s
14 progress in extending cable service to other
15 areas in the franchise area.

16 “(D) NOTICE BY COMMISSION.—Upon re-
17 ceipt of a complaint under this paragraph alleg-
18 ing a violation of this subsection by a cable op-
19 erator, the Commission shall give notice of the
20 complaint to the cable operator.

21 “(E) INVESTIGATION.—In investigating a
22 complaint under this paragraph, the Commis-
23 sion may require a cable operator to disclose to
24 the Commission such information and docu-
25 ments as the Commission deems necessary to



1 determine whether the cable operator is in com-
2 pliance with this subsection. The Commission
3 shall maintain confidential any information or
4 document collected under this subparagraph.

5 “(F) DEADLINE FOR RESOLUTION OF
6 COMPLAINTS.—Not more than 60 days after
7 the Commission receives a complaint under this
8 paragraph, the Commission shall issue a deter-
9 mination with respect to each violation alleged
10 in the complaint.

11 “(G) DETERMINATION.—If the Commis-
12 sion determines (in response to a complaint
13 under this paragraph or on its own initiative)
14 that a cable operator has denied access to its
15 cable service to a group of potential residential
16 cable service subscribers because of the income
17 of that group, the Commission shall ensure that
18 the cable operator extends access to that group.

19 “(H) REMEDIES.—

20 “(i) IN GENERAL.—This subsection
21 shall be enforced by the Commission under
22 titles IV and V.

23 “(ii) MAXIMUM FORFEITURE PEN-
24 ALTY.—For purposes of section 503, the
25 maximum forfeiture penalty applicable to a



1 violation of this subsection shall be
2 \$500,000 for each day of the violation.

3 “(iii) PAYMENT OF PENALTIES TO
4 FRANCHISING AUTHORITY.—The Commis-
5 sion shall order any cable operator subject
6 to a forfeiture penalty under this sub-
7 section to pay the penalty directly to the
8 franchising authority involved.

In section 630(l)(3) of such Act (as so added), strike
subparagraph (E) and redesignate the succeeding sub-
paragraphs accordingly.

In section 630 of the Communications Act of 1934,
as added by section 101 of the bill, after subsection (k)
insert the following new subsection (and redesignate the
succeeding subsection accordingly):

9 “(l) REPORTING, RECORDS, AND AUDITS.—

10 “(1) REPORTING.—A cable operator with a
11 franchise under this section to provide cable service
12 in a franchise area shall make such periodic reports
13 to the Commission and the local franchising author-
14 ity for such franchise area as the Commission may
15 require to verify compliance with subsections (c)(1)
16 and (e)(2).

17 “(2) AVAILABILITY OF BOOKS AND RECORDS.—
18 Upon request under paragraph (3) by a franchising



1 authority for a franchise area, and upon request by
2 the Commission, a cable operator with a national
3 franchise for such franchise area shall make avail-
4 able its books and records to periodic audit by such
5 local franchising authority or the Commission, re-
6 spectively.

7 “(3) FRANCHISING AUTHORITY AUDIT PROCE-
8 DURE.—A franchising authority may, upon reason-
9 able written request, but no more than once in any
10 12-month period, review the business records of such
11 cable operator to the extent reasonably necessary to
12 ensure payment of the fees required by subsections
13 (c)(1) and (e)(2). Such review may include the meth-
14 odology used by such cable operator to assign por-
15 tions of the revenue from cable service that may be
16 bundled or functionally integrated with other serv-
17 ices, capabilities, or applications. Such review shall
18 be conducted in accordance with procedures estab-
19 lished by the Commission.

20 “(4) COST RECOVERY.—

21 “(A) To the extent that the review under
22 paragraph (3) identifies an underpayment of an
23 amount meeting the minimum percentage speci-
24 fied in subparagraph (B) of the fee required
25 under subsection (c)(1) or (e)(2) for the period



1 of review, the cable operator shall reimburse the
2 franchising authority the reasonable costs of
3 any such review conducted by an independent
4 third party, as determined by the Commission,
5 with respect to such fee. The costs of any con-
6 tingency fee arrangement between the fran-
7 chising authority and the independent reviewer
8 shall not be subject to reimbursement.

9 “(B) The Commission shall determine by
10 rule the minimum percentage underpayment
11 that requires reimbursement under subpara-
12 graph (A).

13 “(5) LIMITATION.—Any fee that is not reviewed
14 by a franchising authority within 3 years after it is
15 paid or remitted shall not be subject to later review
16 by the franchising authority under this subsection
17 and shall be deemed accepted in full payment by the
18 franchising authority.

Strike section 102 of the bill and insert the fol-
lowing:

19 **SEC. 102. DEFINITIONS.**

20 Section 602 of the Communications Act of 1934 (47
21 U.S.C. 522) is amended—



1 (1) in paragraph (4), by inserting before the
2 semicolon at the end the following: “, or its equiva-
3 lent as determined by the Commission”;

4 (2) in paragraph (5)(A), by inserting “(regard-
5 less of whether such person or group provides such
6 service separately or combined with a telecommuni-
7 cations service or information service)” after “over
8 a cable system”; and

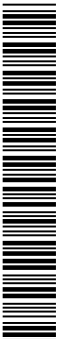
9 (3) by striking paragraph (6) and inserting the
10 following:

11 “(6) the term ‘cable service’ means—

12 “(A)(i) the one-way transmission to sub-
13 scribers of (I) video programming, or (II) other
14 programming service; and

15 “(ii) subscriber interaction, if any, which is
16 required for the selection or use of such video
17 programming or other programming service; or

18 “(B) the transmission to subscribers of
19 video programming provided through wireline
20 facilities located at least in part in the public
21 rights-of-way, without regard to delivery tech-
22 nology, including Internet protocol technology;
23 except that the term ‘cable service’ does not in-
24 clude the provision of—



1 “(i) solely interactive on-demand serv-
2 ices;
3 “(ii) any video programming provided
4 by a provider of commercial mobile service
5 provider (as such term is defined in section
6 332(d)); or
7 “(iii) or any information service.”.

